

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SIERRA CLUB, *et al.*,

Plaintiffs,

and

THE SPOKANE TRIBE OF INDIANS,

Plaintiff-Intervenor,

v.

REGIONAL ADMINISTRATOR OF THE  
ENVIRONMENTAL PROTECTION  
AGENCY, CHRIS HLADIK, *et al.*,

Defendants,

and

SPOKANE COUNTY; KAISER  
ALUMINUM WASHINGTON LLC; and  
STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY,

Defendant-Intervenors.

No. C11-1759BJR

UNOPPOSED MOTION AND  
STIPULATED [PROPOSED] ORDER TO  
STAY DATE FOR FILING STATUS  
REPORT IN LIGHT OF LAPSE OF  
APPROPRIATIONS

Note on Motions Calendar: January 10,  
2019

The United States of America hereby moves for a stay of the January 15, 2019, date for

UNOPPOSED MOTION AND STIPULATED  
[PROPOSED] ORDER TO STAY  
STATUS REPORT - 1  
Case No. C11-1759BJR

David J. Kaplan.  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington D.C. 20044

1 the parties to file their status report in this case. This report is due on that date based on the  
 2 Court's prior Minute Order (Doc. No. 184), which granted the unopposed motion by Plaintiffs  
 3 and the Plaintiffs-Intervenor to stay this case and which directed the Parties to file a status report  
 4 every 120 days. The grounds for this unopposed motion are as follows:

5 1. At the end of the day on December 21, 2018, the appropriations act that had been  
 6 funding the Department of Justice expired and appropriations to the Department lapsed. The  
 7 same is true for several other Executive agencies, including the defendants Regional  
 8 Administrator of the Environmental Protection Agency, *et al.* (collectively "EPA"). The  
 9 Department does not know when funding will be restored by Congress.  
 10

11 2. Absent an appropriation, Department of Justice attorneys and employees of the  
 12 Defendants are prohibited from working, even on a voluntary basis, except in very limited  
 13 circumstances, including "emergencies involving the safety of human life or the protection of  
 14 property." 31 U.S.C. § 1342.  
 15

16 3. Undersigned counsel for the Department of Justice therefore requests a stay of the  
 17 January 15, 2019, date for filing the status report until Congress has restored appropriations to  
 18 the Department.  
 19

20 4. If this motion for a stay is granted, undersigned counsel will notify the Court as  
 21 soon as Congress has appropriated funds for the Department. The Government requests that, at  
 22 that point, the current status report deadline be extended commensurate with the duration of the  
 23 lapse in appropriations.  
 24

25 5. Counsel for all other parties in this case -- Plaintiffs Sierra Club and Center for  
 26 Environmental Law & Policy, Intervenor-Plaintiff Spokane Tribe of Indians, and Intervenor-  
 27 Defendants Spokane County, Kaiser Aluminum Washington LLC, and State of Washington,  
 28

1 Department of Ecology -- have authorized the undersigned counsel for the federal Government  
2 to state that they have no objection to this motion, and that they stipulate to the requested order.

3 Therefore, although we greatly regret any disruption caused to the Court and the other  
4 litigants, the federal Government hereby moves for a stay of the January 15, 2019, date for filing  
5 the joint status report in this case until Department of Justice attorneys are permitted to resume  
6 their usual civil litigation functions.  
7

8  
9  
10 ORDER  
11

12  
13  
14 IT IS SO ORDERED, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.  
15

16  
17  
18 \_\_\_\_\_  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

1 Respectfully submitted by:

2 By: /S/ David Kaplan  
3 DAVID J. KAPLAN  
4 Attorneys for Federal Defendants  
5 United States Department of Justice  
6 Environmental Defense Section  
7 P.O. Box 7611  
8 Washington, DC 20044  
9 (202) 514-0997  
10 David.kaplan@usdoj.gov

11 And Order Stipulated to by:

12 By: /S/ David Kaplan  
13 DAVID J. KAPLAN  
14 Attorneys for Federal Defendants  
15 United States Department of Justice  
16 Environmental Defense Section  
17 P.O. Box 7611  
18 Washington, DC 20044  
19 (202) 514-0997  
20 David.kaplan@usdoj.gov

21 SMITH & LOWNEY, PLLC

22 By: /S/ Richard A. Smith  
23 Richard A. Smith, WSBA #21788  
24 Attorneys for Plaintiff  
25 2317 E. John St., Seattle, WA 98112  
26 Tel: (206) 860-2883  
27 Fax: (206) 860-4187  
28 rasmithwa@igc.org

29 FOSTER PEPPER PLLC

By: /S/ Lori Terry Gregory  
Lori Terry Gregory, WSBA #22006  
Attorneys for Intervenor Spokane County  
1111 Third Ave., Ste. 3400, Seattle, WA 98101  
(206) 447-4400  
[terrl@foster.com](mailto:terrl@foster.com)

PERKINS COIE LLP

UNOPPOSED MOTION AND STIPULATED  
[PROPOSED] ORDER TO STAY  
STATUS REPORT - 4  
Case No. C11-1759BJR

David J. Kaplan.  
United States Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington D.C. 20044

1 By: /S/ Margaret C. Hupp  
2 Margaret C. Hupp, WSBA #43295  
3 Attorneys for Intervenor Kaiser Aluminum Washington LLC  
4 1201 Third Ave., Ste. 4800, Seattle, WA 98101  
5 (206) 359-8000  
6 MHupp@perkinscoie.com

7  
8 BOB FERGUSON  
9 Attorney General

10 By: /S/ Ronald L. Lavigne  
11 Ronald L. Lavigne, WSBA #18550  
12 Attorneys for Intervenor State of Washington, Dept. of Ecology  
13 P.O. Box 40117, Olympia, WA 98504  
14 (360) 586-6751  
15 [RonaldL@atg.wa.gov](mailto:RonaldL@atg.wa.gov)

16 /S/ Theodore C. Knight  
17 Theodore Clare Knight, WSBA# 39683  
18 Attorney for the Spokane Tribe of Indians  
19 9121 NE Briar Rose Lane  
20 Bainbridge Island, WA 98110  
21 509-953-1908  
22 Email: tedk@spokanetribe.com  
23  
24  
25  
26  
27  
28  
29

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing filing was electronically filed with the Clerk of the Court on January 10, 2019, using the CM/ECF system, which will send notification of said filing to the attorneys in this case registered with the Court's CM/ECF system.

/S/ David Kaplan